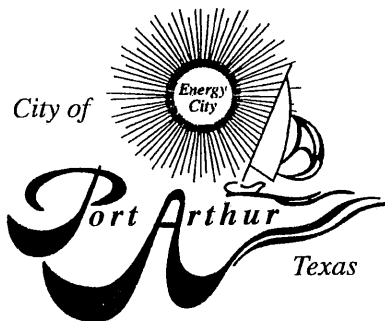


DELORIS "BOBBIE" PRINCE, MAYOR
MICHAEL "SHANE" SINEGAL, MAYOR PRO-TEM

MARK T. SOKOLOW
CITY ATTORNEY

COUNCIL MEMBERS:
JACK CHATMAN, JR.
CAL JONES
THOMAS J. HENDERSON
MARTIN FLOOD
JOHN BEARD, JR.
ROBERT E. WILLIAMSON
WILLIE "BAE" LEWIS



January 16, 2008

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 JAN 17 PM 2:53
CHIEF CLERKS OFFICE

VIA FACSIMILE (512) 239-3311 AND
FEDERAL EXPRESS PRIORITY OVERNIGHT - TRACKING #841702152140

Texas Commission on Environmental Quality
Office of the Chief Clerk
Room 1101, Building F
12100 Park 35 Circle
Austin, TX 78753

Attn: Agenda Docket Clerk
Docket No. 2007-0599-MSW

Dear Sir or Madam:

Attached, please find the original and eleven (11) copies of the City of Port Arthur's Response to Texas Campaign for the Environment and Community In-Power and Development Association Inc.'s Motion to Overturn Executive Director's November 28, 2007 Temporary Authorization for Acceptance of Newpark Waste as Alternative Daily Cover by City of Port Arthur Landfill, which we would request that you file in the record.

A copy of this letter will be forwarded to the parties listed in the mailing list.

Sincerely,

Mark T. Sokolow
City Attorney

MTS:gt

Attachments

TCEQ Docket No. 2007-0599-MSW

MOTION TO OVERTURN	§	BEFORE THE
EXECUTIVE DIRECTOR'S	§	
APPROVAL OF ALTERNATIVE	§	TEXAS COMMISSION ON
DAILY COVER BY REPUBLIC	§	
WASTE SERVICES OF TEXAS LTD	§	
	§	
	§	ENVIRONMENTAL QUALITY

CITY OF PORT ARTHUR'S RESPONSE TO
TEXAS CAMPAIGN FOR THE ENVIRONMENT AND COMMUNITY IN-
POWER AND DEVELOPMENT ASSOCIATION INC.'S MOTION TO
OVERTURN EXECUTIVE DIRECTOR'S NOVEMBER 28, 2007 TEMPORARY
AUTHORIZATION FOR ACCEPTANCE OF NEWPARK WASTE AS
ALTERNATIVE DAILY COVER BY CITY OF PORT ARTHUR LANDFILL

TO THE HONORABLE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW, the City of Port Arthur and herein files this response to the Motion to Overturn the Executive Director's November 28, 2007 Temporary Authorization to utilize Newpark Waste, and would show unto the Commission the following:

I.

The City of Port Arthur has a permit with the Texas Commission of Environmental Quality to operate a landfill adjacent to Highway 73. The City of Port Arthur is a minority community that has been hit by two hurricanes, Hurricane Rita and Hurricane Humberto. The City of Port Arthur appreciates the willingness of the Executive Director to issue the temporary authorization dated November 28, 2007. It is contemplated that Newpark will provide the material at no cost to the City, and will pay for any and all ancillary costs thereon, for example,

extra sampling cost. This could save the City up to \$500,000 per year and the City wants the option to utilize the Newpark material if the City Council so chooses. The authorization signed by the Executive Director has ample safeguards to protect the public's interest as to provide sampling, documentation, a minimum thickness of cover, and status reports to the TCEQ. This authorization is only for 180 days. The Executive Director did not abuse his discretion to issue such a temporary authorization, especially in light of the April 4, 2006 report from Michael Aplin, M.S., Senior Toxicologist, of the Texas Commission on Environmental Quality, a copy of said report is attached as Exhibit "A". The conclusion of the report states the following:

"Conclusion

The brief risk-base review was performed based on information provided by Newpark. The risk-based review did not identify any specific human-health concerns regarding the use of the treated Newpark material as ADC at MSW landfills. As long as the Newpark material is routinely evaluated and analytical results remain consistent with the findings presented, in terms of its chemical composition, use of materials as ADC should not pose a threat to human health. The health-protectiveness of using Newpark materials ADC at MSW landfills may be re-evaluated in the future. As has always been the case, proper precautions

should be taken in handling, storage, and application of the ADC material at MSW landfills to protect human health and the environment."

WHEREFORE, PREMISES CONSIDERED, the City of Port Arthur asks that the Texas Commission on Environmental Quality issue an Order confirming the Authorization for the City of Port Arthur to have this option to utilize the Newpark material for 180 days under the same guidelines as issued in the Executive Director's November 28, 2007 authorization.

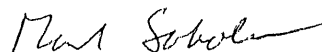
Respectfully submitted,



Mark T. Sokolow
City Attorney
State Bar No. 18824750
444 4th Street
Port Arthur, TX
(409) 983-8126
(409) 983-8124 (fax)

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2008 the original and eleven true and correct copies of the City of Port Arthur's Response to Overturn will be filed with the Chief Clerk of the TCEQ and a copy will be served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail or by deposit in the U. S. Mail.



Mark T. Sokolow, City Attorney

Mailing List
City of Port Arthur
TCEQ Docket No. 2007-0599-MSW

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Bridget Bohac
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P.O. Box 13087
Austin, Texas 78711-3087
512/239-4000 FAX 512/239-4007

Kyle Lucas
TCEQ Alternative Dispute
Resolution Program MC 222
P.O. Box 13087
Austin, Texas 78711-3087
512/239-0687 FAX 512/239-4015

EXHIBIT "A"

Kathleen Hartnett White, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 4, 2006

Michael L. Woodward
Hance, Scarborough, Wright, Woodward & Weisbart
Attorneys and Counselors at Law
111 Congress Avenue
Suite 500
Austin, Texas 78701

Dear Mr. Woodward:

In response to your request (August 29, 2005) on behalf of Newpark Resources, Inc., the Toxicology Section (TS) at the Texas Commission on Environmental Quality (TCEQ) has conducted a brief risk-based review of Newpark's treated material used as alternative daily cover (ADC) at municipal solid waste (MSW) landfills. This review was delayed while the MSW rules were being rewritten, reviewed, and promulgated. Once this process was complete, the TCEQ was able to proceed with a brief risk-based review. The TS review considers human-health issues related to the use of the Newpark material as ADC and does not evaluate other non-health issues, such as impacts to surface water, or its use for any other purpose. Specifically, this evaluation does not include an assessment of the quality assurance/quality control (QA/QC) of the data, and does not consider whether the material that was tested had aged or been subject to weathering.

Conclusion

The brief risk-based review was performed based on information provided by Newpark. The risk-based review did not identify any specific human-health concerns regarding the use of the treated Newpark material as ADC at MSW landfills. As long as the Newpark material is routinely evaluated and analytical results remain consistent with the findings presented, in terms of its chemical composition, use of the material as ADC should not pose a threat to human health. The health-protectiveness of using Newpark material as ADC at MSW landfills may be re-evaluated in the future. As has always been the case, proper precautions should be taken in handling, storage, and application of the ADC material at MSW landfills to protect human health and the environment.

Discussion

The TS relied on the information provided in your letter and the documents which were enclosed to complete its risk-based review:

1. AM Environmental, L.L.P.'s "Newpark Supplemental Report, Alternative Daily Cover", dated March 11, 2005; and
2. Newpark's memorandum entitled, "Reclaimed Solids from Oil and Gas Wastes."

Michael L. Woodward
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April 4, 2006

In addition to these two documents, the TS reviewed:

1. AM Environmental, L.L.P.'s "Preliminary Report Alternative Daily Cover Phase I Test Results, Volumes 1 through 4", dated November 5, 2004; and
2. Historical summary results of Newpark ADC material

The risk-based review focused on the analytical results from samples taken of the ADC material, and the consistency of these results across sampling events. The risk posed by leaching of metals, volatiles, and other contaminants was evaluated on data obtained using the standard EPA test, Toxicity Characteristic Leaching Procedure (TCLP). One simple, conservative screening analysis of ADC analytical results is to compare measured concentrations of specific constituents to Tier 1 Texas Risk Reduction Program (TRRP) protective concentration levels (PCLs) for residential exposure. These risk-based health-protective PCLs are levels in soil or groundwater below which adverse effects would not be expected, assuming life-time residential exposure. Obviously, material used as ADC at a MSW landfill would not be directly comparable to these TRRP PCLs, due partly to the fact that the ADC is not "soil", but mostly because exposure at a MSW landfill would not approach residential exposure assumptions, as described in TRRP. However, as a conservative screening tool, the TRRP PCLs help in a risk-based health evaluation of those contaminants in Newpark ADC.

TCLP ADC Results (mg/L) Compared to TRRP Groundwater PCLs

Historical summary results from Newpark show maximum detected TCLP concentrations of arsenic (1.02), barium (3.2), cadmium (0.239), chromium (0.5), lead (0.5), and silver (0.83) detected above residential and Commercial/Industrial (C/I) groundwater (GW) ingestion numbers ($^{GW}Soil_{ing}$) for As (0.01), Ba (2), Cd (0.005), Cr (0.1), Pb (0.015), and Ag (0.12, 0.37).

More recent and comprehensive results from AM Environmental's "Preliminary Report, Alternative Daily Cover Phase I Test Results, Volumes 1 through 4" (November 2004) show maximum detected TCLP concentrations of selenium (0.0876) and benzene (0.0154) above residential and C/I GW ingestion numbers for selenium and benzene (0.05 and 0.005, respectively).

Finally, results from AM Environmental's "Newpark Supplemental Report, Alternative Daily Cover" (March 2005) of a composite sample show a concentration of TCLP benzene (0.00575), slightly above the residential and C/I GW ingestion number for benzene (0.005).

Overall, the extensive TCLP analysis of Newpark material indicates low levels of leachability. Of over 150 chemicals analyzed for, few were detected in leachate, and those that were, rarely exceeded Tier 1 GW PCLs. There is little potential for adverse health effects, based on the TCLP results of the Newpark material, and its intended use as ADC at MSW landfills.

Total ADC Results (mg/kg) Compared to TRRP Direct Contact Soil PCLs

Historical summary results from Newpark show maximum detected total concentrations of arsenic (32.5) and barium (19,600) above residential direct contact soil numbers ($Res^{Tot}Soil_{Comb}$) for As and Ba (24 and 2800, respectively). None of the maximum concentrations exceed C/I direct contact numbers ($C/I^{Tot}Soil_{Comb}$).

Michael L. Woodward
Page 3
April 4, 2006

More recent and comprehensive results from AM Environmental's "Preliminary Report Alternative Daily Cover Phase I Test Results, Volumes 1 through 4" (November 2004) show maximum detected total concentrations of barium (4,450), phenanthrene (26.2), >C12-C16 aliphatics (17,500), >C12-C16 aromatics (4,620), and >C16-C21 aromatics (8,880) at levels above Res direct contact soil numbers (Res ^{Tot}Soil_{Comb}). Of these, phenanthrene, and >C12-C16 aliphatics also exceeded C/I direct contact soil numbers (C/I ^{Tot}Soil_{Comb}).

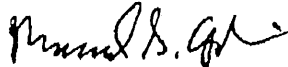
Finally, results from AM Environmental's "Newpark Supplemental Report, Alternative Daily Cover" (March 2005) of a composite sample show concentrations of phenanthrene (17.7) and barium (2,890) slightly above their residential direct contact numbers (Res ^{Tot}Soil_{Comb}), but below C/I direct contact numbers (C/I ^{Tot}Soil_{Comb}).

Overall, the analysis of Newpark material does not indicate total constituent levels of concern. Of over 150 chemicals analyzed, few were detected in Newpark material, and those that were, rarely exceeded Tier 1 Soil PCLs. Levels of hydrocarbons are elevated, in the single digit percentage component of Newpark material, but sampling results support the contention that the majority of these hydrocarbons are less toxic aliphatic forms. There is little potential for adverse health effects, based on the total constituent results of the Newpark material, and its intended use as ADC at MSW landfills.

Summary

Results of total and TCLP analysis of Newpark's material are relatively consistent, and indicate that this material could be used as ADC at MSW landfills from a health-effects perspective. This evaluation is not a detailed quantitative effort to evaluate the human-health risk of using the Newpark material as ADC, but it does consider the available analytical data in the context of the intended use of the material in reaching the final conclusions. As stated earlier, this letter evaluates the data provided from a health effects perspective but does not evaluate other non-health issues. If you have any other questions or would like more information about this risk-based evaluation, please call me at (512) 239-1792.

Sincerely,



Michael S. Aplin, M.S.
Senior Toxicologist
Texas Commission on Environmental Quality

cc: Tom Ballantine, President and COO, Newpark Resources, Inc.
Phill Clark, Vice President of Regional Compliance, Newpark Environmental Services
Jeffrey Saitas, Saitas & Arenson